

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FLETCHER B. DAVIS,

Respondent Below-  
Appellant,

v.

JAMIE A. THOMAS,

Petitioner Below-  
Appellee.

§

§ No. 195, 2009

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§

§ Court Below—Family Court

§ of the State of Delaware

§ in and for Sussex County

§ File No. CS07-13702

§

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Submitted: August 6, 2009

Decided: August 27, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 27th day of August 2009, it appears to the Court that:

(1) On April 6, 2009, the Court received the appellant's notice of appeal from the Family Court's March 13, 2009, order dismissing his former wife's request that the Family Court retain ancillary jurisdiction over the division of marital property and counsel fees in their divorce case.

(2) The record reflects that, on May 22, 2009, the Clerk wrote to the appellant informing him that the court reporter had not yet received payment for the transcript in connection with the appeal. The Clerk directed the appellant to arrange for prompt payment of the transcript fee on or before June 5, 2009 or a notice to show cause would issue. By June 29, 2009, the

transcript fee still had not been paid. On July 6, 2009, the Clerk issued a notice to show cause based upon the failure of the appellant to diligently prosecute his appeal pursuant to Supreme Court Rule 29(b) by not paying the Family Court filing fee and transcript costs.

(3) On July 20, 2009, the Clerk received the appellant's response to the notice to show cause. In his response, the appellant stated that, having been denied *in forma pauperis* status by the Family Court, he could not afford to pay for the transcripts. He further stated that he intended to raise the issue of the denial in his opening brief and was under the impression that, under those circumstances, he was not currently required to pay the fees.

(4) On July 22, 2009, the Clerk responded by informing the appellant that he was currently obligated to pay the necessary fees and that the notice to show cause would be held in abeyance pending payment of the fees no later than August 5, 2009. By August 6, 2009, the court reporter still had not received payment for the transcript. As of the date of this Order, there is no evidence that the required payment has been made.

(5) This Court has the authority to dismiss an appeal for failure of the appellant to diligently prosecute the appeal.<sup>1</sup> The record in this case

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<sup>1</sup> Supr. Ct. R. 29(b).

plainly reflects that, despite being afforded several opportunities to pay the required fees, the appellant has failed to do so. In light of the appellant's failure to diligently prosecute his appeal, we conclude that his appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 29(b), the within appeal is DISMISSED.<sup>2</sup>

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>2</sup> The appellant's motion under Supreme Court Rule 15(b), filed on August 18, 2009, is hereby denied.